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State Laws on Driving Under the Influence of Drugs or Controlled Substances

January 1999

State	Citation	Statutory Basis for Offense
Alabama	§32-5A-191(a)(3), (4) & (5)	under the influence of 1) any substance, 2) a controlled substance, or 3) alcohol and a controlled substance
Alaska	§28.35.030(a)(1) & (3)	under the influence of 1) a controlled substance or 2) intoxicating liquor and another substance
American Samoa	§22.0707(a)	under the influence of 1) any narcotic drug or 2) any other drug
Arizona	§28-1381(A)(1)	under the influence of 1) any drug, a vapor-releasing substance containing a toxic substance or 2) a combination of liquor, drugs or toxic vapor-releasing substance if the person is impaired to the slightest degree
Arkansas	§§5-65-102(1) & 5-65-103(a)	any intoxicant or controlled substance
California	Veh. Code §§23152 & 23153	under the influence of 1) any drug or 2) a combination of alcohol and any drug
Colorado	§§42-4-1301(1)(a) & (1)(b)	1) any drug or 2) a combination of alcohol and drugs
Connecticut	§14-227a(a)	under the influence of 1) any drug or 2) any drug and intoxicating liquor
Delaware	21 §4177(a)	under the influence of 1) any drug or 2) a combination of alcohol and a drug
DC	§40-716(b)(1)	under the influence of 1) any drug or 2) a combination of any drug and alcohol
Florida	§§316.193(1)(a) & 316.1931	under the influence of a controlled substance or chemical substance listed in chapter 893 and §877.111 of Florida statutes

Georgia	§40-6-391(a)(2), (3) & (4)	1) under the influence of any drug, 2) under the intentional influence of any glue, aerosol or other toxic vapor, or 3) under the combined influence of alcohol and/or any of the previous substances
Guam	Title 16 §9104(a) & (f)	under 1) the influence of any drug or 2) the combined influence of alcohol and any drug
Hawaii	§§291-7 & 291-4.4	under the influence of a controlled substance
Idaho	§§18-8004(1)(a) & (5)	under the influence of 1) any drug, 2) intoxicating substance, 3) any narcotic drug, or 4) a combination of any drug and alcohol
Illinois	625ILCS 5/11-501(a) (3), (4) & (5)	under the influence of 1) any drug, 2) an intoxicating compound, or 3) a combination of any drug, intoxicating compound and alcohol
Indiana	IC9-30-5-2 & IC9-13-2-86	under the influence of 1) any drug, 2) a controlled substance, or 3) any combination of alcohol and drugs
Iowa	§321J.2(1)(a)	under the influence of 1) any drug or 2) any combination of drugs including an alcoholic beverage
Kansas	§8-1567(a)(4) & (5)	under the influence of 1) any drug or 2) a combination of alcohol and drugs
Kentucky	§189A.010(1)(c) & (d)	under the influence of 1) any substance or 2) a combination of alcohol and any substance which may impair driving ability
Louisiana	§14:98(A)(1)(c)	under the influence of any controlled dangerous substance as set forth in schedules I through IV of §40:964
Maine	29-A MRSA §2411(1)	under the influence of intoxicants, defined as being under the influence of alcohol a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs; drugs being defined as either scheduled drugs (controlled substances), or any natural or artificial chemical substance that when taken into the human body can impair the ability of a driver to safely operate a motor vehicle
Maryland	Trans. §21-902(c)(1) & (d)	under the influence of 1) any drug, 2) any combination of drugs, 3) a combination of one or more drugs and alcohol or 4) any controlled dangerous substance
Massachusetts	Ch. 90 §24(1)(a)(1)	under the influence of 1) marihuana, narcotic drugs, depressants or stimulant substances all as defined in Ch. 94 §1, or 2) vapors of glue
Michigan	§§257.625(1)(a) & (3)	under the influence of or visibly impaired by 1) a controlled substance or 2) a combination of liquor and a controlled substance

Minnesota	§169.121 subd 1(b), (c) & (g)	under the influence of 1) a controlled substance, 2) a listed hazardous substance, or 3) a combination of alcohol, a controlled substance or a listed hazardous substance
Mississippi	§63-11-30(1)	under the influence of 1) any substance or 2) any drug or controlled substance the possession of which is illegal
Missouri	§577.010	drugged condition, being defined as under the influence of alcohol, a controlled substance or drug, or any combination thereof
Montana	§61-8-401(b), (c) & (d)	under the influence of 1) any drug, 2) a dangerous drug or 3) alcohol and any dangerous or other drug
Nebraska	§60-6,196(1)(a)	under the influence of any drug
Nevada	§484.379(2)	I. under the influence of 1) a controlled substance or 2) a combination of intoxicating liquor and a controlled substance; or II. any person who inhales, ingests, applies, otherwise uses any chemical, poison, organic solvent and any compound or a combination of these to a degree which renders them incapable of driving safely
New Hampshire	§265:82(I)(a)	under the influence of 1) any controlled drug and 2) and combination of intoxicating liquor and controlled drugs
New Jersey	§39:4-50(a)	under the influence of 1) a narcotic, 2) an hallucinogenic drug or 3) a habit-producing drug
New Mexico	§66-8-102(B)	under the influence of any drug
New York	V&T §§114-a & 1192(4)	impaired by a controlled substance
North Carolina	§§20-4.01(14a) & 20-138(a)(1)	under the influence of any impairing substance, meaning alcohol, a controlled substance, any other drug or psychoactive substance
North Dakota	§39-08-01(1)(c) & (d)	under the influence of 1) any drug or substance, 2) any combination of drugs or substances and 3) a combination of intoxicating liquor and any drug or substance
Ohio	§4511.19(A)(1)	under the influence of 1) a drug of abuse or 2) a combination of alcohol and a drug of abuse
Oklahoma	47 §11-902(A)(3), (4) & (B) and 47 §761(A)	I. under the influence of 1) intoxicating substances or 2) a combination of these and alcohol; or II. impaired by any other substance
Oregon	§813.300(2)	under the influence of 1) a controlled substance, 2) a controlled substance and intoxicating liquor, or 3) an

		inhalant
Pennsylvania	75 §3731(a)(2) & (3)	under the influence of 1) a controlled substance or 2) a controlled substance and alcohol
Puerto Rico	9 §1045	under the influence of 1) any narcotic drug, 2) marihuana or 3) a depressing or stimulating substance
Rhode Island	§31-27-2(a)	under the influence of 1) any drug, 2) toluene 3) any controlled substance or 4) any combination of these substances and intoxicating liquor
South Carolina	§56-5-2930(2) & (3)	under the influence of 1) any drug, 2) any combination of drugs or substances or 3) a combination of alcohol and other drugs or substances
South Dakota	§32-23-1(3) & (4)	under the influence of 1) any substance, 2) any controlled drug, 3) marijuana, or 4) a combination of these substances and an alcoholic beverage
Tennessee	§55-10-401(a)(1)	under the influence of 1) any intoxicant, 2) marijuana, 3) narcotic drug or 4) drugs producing stimulating effects on the central nervous system
Texas	Penal Code §§49.01(2)(A) & 49.04	while intoxicated, meaning not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, or a combination or two or more of these substances into the body
Utah	§41-6-44(2)(a)(ii)	under the influence of 1) any drug or 2) a combination of any drug and alcohol
Vermont	23 §1201(a)(3)	under the influence of 1) any regulated drug or 2) a combination of any regulated drug and alcohol
Virginia	§18.2-266	under the influence of 1) any drug, 2) any narcotic drug, 3) any self-administered intoxicant or drug of whatsoever nature, or 4) a combined influence of alcohol and any drug or drugs
Virgin Islands	20 §493(a)(1)	under the influence of 1) a controlled substance or 2) a combination of intoxicating liquor and a controlled substance
Washington	§§46.61.502(1)(b) & (c) & 46.61.504(1)(b) & (c)	under the influence of or affected by 1) any drug or 2) a combination of intoxicating liquor and any drug
West Virginia	§17C-5-2	under the influence of 1) any drug, 2) controlled substance, or 3) a combination of alcohol and any other controlled substance or any other drug
Wisconsin	§§346.63(1)(a) & (2)(a)(1), 450.01 (1) & 885.235(5)(b) & (c)	under the influence of 1) any drug, 2) an intoxicant, 3) a controlled substance, 4) a combination of an

		intoxicant a controlled substance, or 5) a combination of an intoxicant and any other drug
Wyoming	§31-5-233(b)(ii)(B) & (C)	under the influence of 1) a controlled substance ore 2) a combination of alcohol and any controlled substance

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(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor and, upon a third or subsequent conviction thereof, be guilty of a high and aggravated misdemeanor and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 nor more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not less than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not less than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program; and

(E) If the defendant is sentenced to a period of imprisonment for less than 12 months, a period of probation of 12 months less any days during which the defendant is actually incarcerated;

(2) For the second conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 nor more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than 90 days nor more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not less than 72 hours of actual incarceration;

(C) Not less than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program;

(E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if indicated by such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the defendant is actually incarcerated; or

(3) For the third or subsequent conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not less than 120 days nor more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not less than 15 days of actual incarceration;

(C) Not less than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources. The sponsor of any such program shall provide written notice of such approval to the person upon enrollment in the program;

(E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if indicated by such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the defendant is actually incarcerated.

For the purpose of imposing a sentence under this subsection, a plea of nolo contendere or an adjudication of delinquency based on a violation of this Code section shall constitute a conviction.

(d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g)(1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under paragraph (2) or (3) of subsection (c) of this Code section for a second or subsequent conviction conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section; or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the 'Uniform Commercial Driver's License Act,' shall be fined as provided in subsection (c) of this Code section.

(j)(1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, name and address of the convicted person, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k)(1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child.

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28-1381. Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
2. If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.
4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28-3001 and the person has an alcohol concentration of 0.04 or more.

B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

C. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

D. A person using a drug prescribed by a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating subsection A, paragraph 3 of this section.

E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to this section, all prior convictions of violating this section, section 28-1382 or section 28-1383 occurring within the past thirty-six months, unless there is an insufficient legal or factual basis to do so.

F. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.

G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 but less than 0.08 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time 0.08 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.

H. Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

I. A person who is convicted of a violation of this section:

1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served.
2. Shall pay a fine of not less than two hundred fifty dollars.
3. May be ordered by a court to perform community service.

J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but twenty-four

consecutive hours of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

K. If within a period of sixty months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1382 or 28-1383, the person:

1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.
2. Shall pay a fine of not less than five hundred dollars.
3. May be ordered by a court to perform community service.
4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the conclusion of the license suspension or revocation or on the date of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

M. In applying the sixty month provision of subsection K of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

N. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

(625 ILCS 5/11-501)

Sec. 11-501. Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol;

(3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely;

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving; or

(6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act.

321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI).

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:
 - a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - b. While having an alcohol concentration of .10 or more.
 - c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.
2. A person who violates subsection 1 commits:
 - a. A serious misdemeanor for the first offense, punishable by all of the following:
 - (1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.
 - (2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to five hundred dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to 321J.20. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.
 - (3) Revocation of the person's driver's license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, which includes a minimum revocation period of one hundred eighty days, including a minimum period of ineligibility for a temporary restricted license of thirty days, and may involve a revocation period of one year.
 - (4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3.
 - b. An aggravated misdemeanor for a second offense, and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, and assessed a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.
 - c. A class "D" felony for a third offense and each subsequent offense, and shall be imprisoned in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.6.
3. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:
 - (1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.
 - (2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.
 - (3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.
 - (4) If the defendant refused to consent to testing requested in accordance with section 321J.6.
 - (5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

- b. All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.
- c. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.
- d. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.
4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:
- a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.
- b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.
- c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.
5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.
6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.
7. a. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.
- b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.
8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.
- a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.
- b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.
- c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.
9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph "b" or "c".

Section History: Recent form

86 Acts, ch 1220, § 2; 87 Acts, ch 118, § 4; 87 Acts, ch 215, § 46; 90 Acts, ch 1233, § 20; 90 Acts, ch 1251, § 33; 97 Acts, ch 177, § 4, 5; 98 Acts, ch 1073, § 9; 98 Acts, ch 1100, § 50; 98 Acts, ch 1138, § 2, 3, 11-13, 37; 99 Acts, ch 96, § 36; 2000 Acts, ch 1118, § 1; 2000 Acts, ch 1135, § 1

Internal References

Referred to in § 232.22, 321.12, 321.213, 321.279, 321.555, 321J.2A, 321J.2B, 321J.3, 321J.4, 321J.4B, 321J.5, 321J.6, 321J.8, 321J.9, 321J.10, 321J.12, 321J.13, 321J.15, 321J.16, 321J.17, 321J.20, 321J.22, 321J.24, 321J.25, 602.6201, 602.6306, 602.8102(51), 707.6A, 804.31, 902.3, 902.3A, 902.9, 907.3, 910.1, 910.2, 910.3, 915.80

Footnotes

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, § 25

Previous Section [321J.1A](#)

Next Section [321J.2A](#)



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Comments about this site or page? iacode@staff.legis.state.ia.us.

Please remember that the person listed above does not vote on bills. Direct all comments concerning legislation to State Legislators.

Last update: Thu Jan 24 10:51:05 CST 2002

URL: [/IACODE/2001SUPPLEMENT/321J/2.html](http://IACODE/2001SUPPLEMENT/321J/2.html)

jhf

3-18-03 mtg w/ Rep Gundrum

Run @ toxicology labs:

- Blood test, not urine test
- "detectable levels" of c.s. in blood use that language

Implications for implied consent: says breath, blood, or urine. Will need to amend so blood only for c.s. ? - is that up to the officer?

3 types: illegals; Rx; OTC

- illegals: Schedule I or any scrip for which you don't have a scrip

- Rx: very difficult to prove wrong usage. ~~At least~~

So: IF Rx or OTC, keep current law.

~~450.01~~ defines "drug" in a way the lab guys like.

450.01 ✓

961 (controlled substance) detectable level

so: Any ~~amt~~ of a controlled substance ^{in schedule I} or other drug, defined in 450.01 ~~or 961~~.

or analogs

per se:

Any detectable amt of controlled subs listed
in schedule I + schedule II or delta9 or any ~~drug~~ Rx drug
w/o a valid scrip

aff defense: same as OWI - ~~wouldnt have~~
would've happened even if there was no
detectable amt of controlled substance.

Drop all the Rx stuff about proper usage

(Delta9 hydrocannabinol...)

~~All sch. I +~~ All sch I+II or any Rx
w/o a valid scrip

Mtg w/ Rep Gondrum

+ Tom Neuser

Ron Laessig

Patrick Hanley

~~Amphetamine~~ marijuana

Don't include urine

"detectable level"

of a controlled substance
or analogs

- Don't cover cases in which ^{you have} prescription ~~into~~ but don't follow
prescription

Same w/ over the counter

Sched. I +

"drugs" - not antibiotic

Delta - 9 THC = 8 hr. metabolite

Poppy seed - ~~not~~ use defense

Marijuana - 2d hand marijuana smoke
smell, ^{but} Not detectable amt,

Analog

Active vs. inactive

Prescription drug - ok under current law -
impairment

Do some drugs
not cause
impairment?

Burden on D -

~~Does~~ 1.

Is parent drug always present?

Delta-9-THC

Schedule I + cocaine unless ~~admitted~~

All controlled subs

detectable amt.

unless prescription

or codeine

cocaine metabolite

11-~~O~~ Hydroxy-tetra hydro

Cannab - THC

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 4:19 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Mark W. Samelstad - Drugged Driving Legislation

Follow Up Flag: Follow up
Due By: Friday, February 28, 2003 5:00 PM
Flag Status: Flagged

Mike and Peggy,

I have e-mailed the proposed draft to DAs, law enforcement, the WI Med. Society, etc. for their review and input. I will forward to you all responses which have inquiries or suggestions. I would greatly appreciate if, as you receive these e-mails, you prepare a response for me or speak with me over the phone. Hopefully it won't be too many.

Thank you very much for all your help. We're close to having this thing ready to go.

Take care.

Mark

-----Original Message-----

From: Mark Samelstad [mailto:msamelstad@wppisys.org]
Sent: Wednesday, March 05, 2003 5:10 PM
To: Rep.Gundrum@legis.state.wi.us
Subject: Mark W. Samelstad - Drugged Driving Legislation

Dear Rep. Gundrum: Having received the Preliminary Draft of the proposed Drugged Driving Legislation, I have taken the time to review the proposed legislation. While I do agree with you and support the changes in the proposed legislation, I do have some concerns regarding the portions of the legislation where it relates to "Defenses" regarding controlled substances. Specifically, I am referring to page 3, Sec. 23.33(4c)(a) 5. The proposed legislation makes an exception to the Drugged Driving Legislation, is the individual in question has obtained the controlled substance or controlled substance analog by means of a valid prescription issued by a doctor. There are controlled substances and controlled substance analogs that do affect an individuals ability to operate heavy machinery and motorized vehicles. When one obtains a prescription for a controlled substance, the pharmacy will place a "sticker" on the pill bottle, which warns the individual that this prescription may cause drowsiness and to use care when operating a car or dangerous machinery. I guess my questions is why make an exception for an individual because they have obtained the controlled substance by a valid prescription. By taking this controlled substance, the individual's ability to operate a motorized vehicle can be impaired. If the officer in making the traffic stop, obtains evidence that the individuals ability to operate the vehicle is impaired (through the Field Sobriety Testing procedure and the use of a PBTTest which registers 0.00%), the officer would then possibly suspect that the individual make be under the influence of a controlled substance. The officer should then be required to obtain a blood sample for testing.

I cannot agree with the provision where we make exceptions to the Drugged Driving Legislation just because an individual has obtained the controlled substance by a valid prescription. The individuals's ability to operate motorized vehicles is still impaired.

*- can still
charge w/
impairment - may
need to off
per of def*

Thank you for your time on this issue.

Respectfully,

Mark W. Samelstad
Chief of Police
New Richmond Police Department
New Richmond, WI 54017

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 4:35 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Scot Mortier: Representative Mark Gundrum - Proposed Drugged Driving Bill

Follow Up Flag: Follow up
Due By: Thursday, February 27, 2003 5:00 PM
Flag Status: Flagged

Here's another.

-----Original Message-----

From: Mortier, Scot
Sent: Thursday, March 06, 2003 8:33 AM
To: Gundrum, Mark
Subject: Scot Mortier: Representative Mark Gundrum - Proposed Drugged Driving Bill

*Dear Mark:

Thanks for sending this out to the membership. I hope you get a broad response.

I like the idea of a zero tolerance for controlled substances. I've got some concerns over how this law would be administered by the police and DA's offices statewide. That concern deals with the "statutory defense" spelled out when one has a valid prescription, etc. What I would not like to see is a bunch of people getting charged with this offense, so it appears on CCAP, the local papers, etc., only to find that they legitimately had the substance in the first place. I also don't know what controlled substances are routinely tested for by the State Hygiene lab when blood or urine is sent in for testing. If they test for commonly prescribed drugs--say Prilosec for example, then you may need to tighten up the language by limiting it to controlled substances in Chapter 961.

That's off the top of my head...gotta run to Court.

Scot Mortier
FDL County

**PS--on the budget process, I think there are many ADA's out there who would take a short unpaid 'holiday' to help cure our agency's current shortfall, but there are some counties, like mine, which have 4 ADA's to rotate amongst 5 judges...and according to the last State study we were down 2.9 people...and if we lose one we are going to be really hurting. I don't know of a single ADA who has not been rattled by the talk of eliminating positions. If you need some input on things relating to this narrow issue, feel free to contact me or Michael O'Rourke in our office (he's on the WDAA). Thanks.

-----Original Message-----

From: Gundrum, Mark
Sent: Wednesday, March 05, 2003 11:49 AM
Subject: Representative Mark Gundrum - Proposed Drugged Driving Bill

Dear District Attorneys and Assistant District Attorneys,

Attached hereto is a draft of proposed legislation related to Drugged Driving. If you are interested, I would appreciate greatly if you would consider reviewing the draft and providing any suggestions you might deem appropriate. If you are going to provide suggestions, please make them as specific as possible, citing the page and line and what proposed language you might suggest. In addition, if you see any serious concerns with the policy here, please feel free to share those with me as

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 5:01 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Representative Mark Gundrum - Proposed Drugged Driving Bill

another

-----Original Message-----

From: Hanson, Jason
Sent: Wednesday, March 05, 2003 1:02 PM
To: Gundrum, Mark
Subject: RE: Representative Mark Gundrum - Proposed Drugged Driving Bill

Rep. Gundrum-

I like it, as long as it leaves the language in 346.63(1)(a) intact, which it appears it does. That is, I read the proposal to ban driving with any measurable amount of unprescribed controlled substances, but to retain the current ban on driving while under the influence of a controlled substance, regardless of whether the substance was prescribed. If my reading is correct, it looks good.

no resp. necessary - reading is correct

Jason Hanson
ADA, Dane County

-----Original Message-----

From: Gundrum, Mark
Sent: Wednesday, March 05, 2003 11:49 AM
Subject: Representative Mark Gundrum - Proposed Drugged Driving Bill

Dear District Attorneys and Assistant District Attorneys,

Attached hereto is a draft of proposed legislation related to Drugged Driving. If you are interested, I would appreciate greatly if you would consider reviewing the draft and providing any suggestions you might deem appropriate. If you are going to provide suggestions, please make them as specific as possible, citing the page and line and what proposed language you might suggest. In addition, if you see any serious concerns with the policy here, please feel free to share those with me as well. I am more than happy to listen, although I clearly do support the policy.

If you do have any thoughts, could you please provide me with the same no later than Wed., March 12th.

Thank you for your consideration of this matter.

Mark Gundrum
State Representative
84th Assembly District
1-888-534-0084 - Office
608-282-3684 - Fax
Rep.Gundrum@legis.state.wi.us - Email

Mailing Address:
State Capitol - Room 19 North
P.O. Box 8952
Madison, WI 53708

<<03-0465P3.pdf>>

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 5:10 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Lorelee Clark - RE: Representative Mark Gundrum - Proposed Drugged Driving Bill

Please let me know your thoughts on this too.

-----Original Message-----

From: Lorelee Clark [mailto:clark.lorelee@co.la-crosse.wi.us]
Sent: Thursday, March 06, 2003 12:49 PM
To: 'Gundrum, Mark'
Subject: Lorelee Clark - RE: Representative Mark Gundrum - Proposed Drugged Driving Bill

Dear Mr. Gundrum:

I do not have time for a lengthy response right now. However, this legislation is, in my opinion, totally unnecessary because we do have and had have the capability of prosecuting offenders who drive while under the influence of an intoxicant including alcohol, drugs or a combination of the same, for years. Besides being unnecessary, this legislation would also be harmful because it creates an affirmative defense that would allow drivers to drive while under the influence of an intoxicant as long as the dosage was within therapeutic levels, regardless of how impaired it renders them to drive.

*Same as
- Reg 4's
big view
re defenses*

I can appreciate that you are committed to the policy of prohibiting drug-impaired drivers. We already have what we need to do so. Please do not introduce this legislation.

Sincerely,

Lorelee Clark

-----Original Message-----

From: Gundrum, Mark [mailto:Mark.Gundrum@legis.state.wi.us]
Sent: Wednesday, March 05, 2003 11:49 AM
Subject: Representative Mark Gundrum - Proposed Drugged Driving Bill

Dear District Attorneys and Assistant District Attorneys,

Attached hereto is a draft of proposed legislation related to Drugged Driving. If you are interested, I would appreciate greatly if you would consider reviewing the draft and providing any suggestions you might deem appropriate. If you are going to provide suggestions, please make them as specific as possible, citing the page and line and what proposed language you might suggest. In addition, if you see any serious concerns with the policy here, please feel free to share those with me as well. I am more than happy to listen, although I clearly do support the policy.

If you do have any thoughts, could you please provide me with the same no later than Wed., March 12th.

Thank you for your consideration of this matter.

Mark Gundrum
State Representative
84th Assembly District

1-888-534-0084 - Office
608-282-3684 - Fax
Rep.Gundrum@legis.state.wi.us - Email

Mailing Address:
State Capitol - Room 19 North
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Madison, WI 53708

<<03-0465P3.pdf>>

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 5:12 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Lloyd Clark: Question on Drugged Driving

-----Original Message-----

From: Churchill, Jolene
Sent: Thursday, March 06, 2003 3:31 PM
To: Gundrum, Mark
Subject: Lloyd Clark: Question on Drugged Driving definition

Do you want to respond?

-----Original Message-----

From: Lloyd Clark [mailto:LloydC@WISMED.ORG]
Sent: Thursday, March 06, 2003 1:51 PM
To: jolene.churchill@legis.state.wi.us
Subject: Question on Drugged Driving definition

Hi Jolene,

Since this is a draft LRB, there were no definitions included. I pulled the definition for "controlled substance analog" out of some California legislation. Are you using the same definition?

the term "controlled substance analog" means either of the following:

1. A substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in Section 11054 or 11055.
2. a substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance classified in Section 11054 or 11055.

Thanks, Jolene, this will help when the Docs ask me how this is being defined.

Lloyd

*Basically -
MCD knows
better*

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, March 06, 2003 5:15 PM
To: Dsida, Michael; Hurley, Peggy
Subject: FW: Gary Schuster: Representative Mark Gundrum - Proposed Drugged Driving Bill

please review also

-----Original Message-----

From: Schuster, Gary
Sent: Thursday, March 06, 2003 8:45 AM
To: Gundrum, Mark
Subject: Gary Schuster: Representative Mark Gundrum - Proposed Drugged Driving Bill

1) what if the controlled substance is taken in combination with other substances such as alcohol or other controlled substances so that the level is within prescribed levels but the subject is impaired ? 2) what about people that abuse other non-controlled substances (huffers) : inhale glue butane etc. 3) what about people who abuse over the counter substances ? -----gary schuster--- assistant d.a. eau claire county ?

-----Original Message-----

From: Gundrum, Mark
Sent: Wednesday, March 05, 2003 11:49 AM
Subject: Representative Mark Gundrum - Proposed Drugged Driving Bill

*could do
anything. If
impaired,
charge under
impaired*

Dear District Attorneys and Assistant District Attorneys,

Attached hereto is a draft of proposed legislation related to Drugged Driving. If you are interested, I would appreciate greatly if you would consider reviewing the draft and providing any suggestions you might deem appropriate. If you are going to provide suggestions, please make them as specific as possible, citing the page and line and what proposed language you might suggest. In addition, if you see any serious concerns with the policy here, please feel free to share those with me as well. I am more than happy to listen, although I clearly do support the policy.

If you do have any thoughts, could you please provide me with the same no later than Wed., March 12th.

Thank you for your consideration of this matter.

Mark Gundrum
State Representative
84th Assembly District
1-888-534-0084 - Office
608-282-3684 - Fax
Rep.Gundrum@legis.state.wi.us - Email

Mailing Address:
State Capitol - Room 19 North
P.O. Box 8952
Madison, WI 53708

well. I am more than happy to listen, although I clearly do support the policy.

If you do have any thoughts, could you please provide me with the same no later than Wed., March 12th.

Thank you for your consideration of this matter.

Mark Gundrum
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Mailing Address:
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Madison, WI 53708

<< File: 03-0465P3.pdf >>

Dsida, Michael

From: Gundrum, Mark
Sent: Tuesday, March 11, 2003 3:22 PM
To: Dsida, Michael; Hurley, Peggy
Cc: Churchill, Jolene
Subject: FW: Proposed legislation

I think we will need to have a joint meeting with the three of us and a main point person from the State Hygiene Lab (I believe that's the entity that does the testing and testifies in these cases) so I can discuss with that expert and both of you how we can best draft this to accomplish what I'm hoping to accomplish without doing other things. My staff will try to coordinate this, but I don't yet know who THE RIGHT person is at the State Lab who should be the one joining us for this meeting. Any suggestions??? Perhaps this Jim Ohldrich, he's got 22 years of experience in the Lab before taking his present position, or someone else that you more regularly work with. I just need to make sure it is the RIGHT person to give us guidance. Thanks.

-----Original Message-----

From: Oehldrich, Jim R.
Sent: Tuesday, March 11, 2003 2:07 PM
To: Gundrum, Mark
Subject: Proposed legislation

Representative Gundrum,

I was talking to Paul Bucher on Monday about a case here at the State Crime Laboratory-Milwaukee and Paul indicated that you were proposing a bill regarding operating with drugs present. I am presently the Drug Identification Unit Leader, but I was the Toxicology Unit Leader for over 22 years. I would like to express some of my concerns about your proposal. I have not had time to digest completely the document, but I have some reservations.

1. I believe what you are proposing is a per se law concerning illegal drugs. If this is true, then you do not have to include any of the information about prescription drugs. The following states have per se laws concerning illegal drugs: Arizona, Georgia, Iowa, Illinois, Minnesota, Rhode Island, Utah and Indiana. Because of the short time I have had you information I have not had the time to look at the language in the listed states. The state of Nevada has prohibited substances and concentration for blood and urine. The Nevada language is as follows: Nevada Rev. Stat. Ann 484.379 -- unlawful for any person who is under the influence

- A controlled substance
- Combination of intoxicating liquor and a controlled substance
- Inhales, ingests, applies, or otherwise uses any chemical, poison, or organic solvent, or any compound -
- renders him incapable of safely driving

2. Because a drug is in the urine at the time of analysis, does not mean that there was an physiological effect by that drug at the time of the incident. Therefore, I am not sure about your proposed language.

3. If you are concerned about prescription controlled substances, that is a different problem. Because I am not an attorney (I play one here at the Crime Lab for mock trials), I am not clear on your proposal concerning prescription controlled drugs. Are you saying that if a person takes his/her prescription medications and is stopped, if the drugs/metabolites are found to be in the therapeutic range for the compounds the person cannot be prosecuted for impairment?

I would propose you look at the language in Nevada and some or all the states with per se laws for illegal drugs before you send you proposed bill forward.

As a side note, from what I am reading in the Nevada language concerning inhaling chemicals etc. this type of language would fill a gap in the Wisconsin Statutes. Presently, in Wisconsin you can inhale chemicals and kill or injury someone and you can not be prosecuted for Homicide by intoxicates use or great bodily injury by intoxicated

use. I have had several cases such as this, the most recent was in Kenosha County where a driver was inhaling a freon compound and injury some pedestrians.

Thank you for your time. If you have any questions, please contact me.

Jim Oehldrich
Drug Identification Unit Leader
State Crime Laboratory-Milwaukee
414-382-7500 Office
oehldrichjr@doj.state.wi.us

Dsida, Michael

From: Gundrum, Mark
Sent: Wednesday, March 12, 2003 7:15 PM
To: Dsida, Michael; Hurley, Peggy
Cc: Churchill, Jolene
Subject: FW: Representative Mark Gundrum - Drugged Driving Bill

Here's another

-----Original Message-----

From: Loeffler, Thomas
Sent: Wednesday, March 12, 2003 4:23 PM
To: Gundrum, Mark
Subject: RE: Representative Mark Gundrum - Drugged Driving Bill

I too support the concept of the bill and how it would support traffic safety. I just have two concerns that you may want to consider.

1. Licit drugs can also cause driving impairment, regardless of whether or not the driver has obtained them via a prescription. If the purpose of the bill is to stop drug related crashes I believe you must address the issue of impairment due to legal drugs.
2. The issue of testing for drugs needs to be addressed. Currently, law enforcement tells me they wait months to get test results back when they want a drug screen done. How this bill will impact that time and who will/can do the tests must be considered.

Thank you for giving me an opportunity to voice my opinions. I certainly like the concept of addressing all modes of driving rather than just the motor vehicle.

If I can help please let me know. Since I'm part of DOT, I can't initiate anything on this unless you request it. Thanks again.

-----Original Message-----

From: Gundrum, Mark
Sent: Wednesday, March 05, 2003 11:48 AM
To: Loeffler, Thomas
Subject: Representative Mark Gundrum - Drugged Driving Bill

Dear Tom,

Attached hereto is a draft of proposed legislation related to Drugged Driving. If you are interested, I would appreciate greatly if you would consider reviewing the draft and providing any suggestions you might deem appropriate. If you are going to provide suggestions, please make them as specific as possible, citing the page and line and what proposed language you might suggest. In addition, if you see any serious concerns with the policy here, please feel free to share those with me as well. I am more than happy to listen, although I clearly do support the policy.

If you do have any thoughts, could you please provide me with the same no later

than Wed., March 12th.

Thank you for your consideration of this matter.

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Mailing Address:
State Capitol - Room 19 North
P.O. Box 8952
Madison, WI 53708

<< File: 03-0465P3.pdf >>

Dsida, Michael

From: Dsida, Michael
Sent: Wednesday, March 19, 2003 9:38 AM
To: Hurley, Peggy
Subject: FW: Chemical names of THC metabolites

-----Original Message-----

From: Neuser, Thomas [mailto:noisey@mail.slh.wisc.edu]
Sent: Wednesday, March 19, 2003 9:22 AM
To: 'Dsida, Michael'
Cc: Hurley, Peggy; Harding, Patrick
Subject: RE: Chemical names of THC metabolites

The answer to both questions is yes, however, the "+" and "-" signs do not carry a lot of practical meaning. Without getting into the chemistry too much, because delta-9-THC in blood comes from smoking a plant (rather than a laboratory-synthesized drug) the drug is present as the (-) stereoisomer only. This stereo-specificity continues as the drug is metabolized, hence the (-) designation on the carboxy-THC. The problem with the 11-hydroxy-THC, I suspect, is that the standard we purchase to identify and quantitate that form of THC somehow becomes +/- mixed as it is processed. (I looked up the formal names from the manufacturer's product information.) Our methods do not discriminate between the +/- forms.

Rather than confuse the issue (and the chemists! I probably could not identify the isomeric carbon in the THC backbone structure) I recommend leaving out the +/- designation.

Tom Neuser

-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Wednesday, March 19, 2003 8:42 AM
To: Neuser, Thomas
Cc: Hurley, Peggy
Subject: RE: Chemical names of THC metabolites

Are the "+" and "-" signs part of the chemical names?

Is "delta-9-tetrahydrocannabinol" the correct name for the active metabolite?

Thanks for your help. We enjoyed meeting with you too. I suspect we will probably talk to you again soon.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

-----Original Message-----

From: Neuser, Thomas [mailto:noisey@mail.slh.wisc.edu]
Sent: Wednesday, March 19, 2003 7:51 AM
To: 'michael.dsida@legis.state.wi.us'
Cc: Harding, Patrick; Hanby, Linda; Laessig, Ronald
Subject: Chemical names of THC metabolites

Good morning!

Here are the formal chemical names of the THC metabolites we measure at WSLH:

Carboxy-THC is (-)-11-nor-9-carboxy-delta-9-tetrahydrocannabinol.

11-hydroxy-THC is (+/-)-11-hydroxy-delta-9-tetrahydrocannabinol.

I enjoyed meeting with you yesterday. If you or your colleagues have any questions or need clarification when you draft Rep. Gundrum's bill, please do not hesitate to contact me.

Tom Neuser

Thomas P. Neuser, MT(ASCP)
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Dsida, Michael

From: Liddicoat, Laura [ll@mail.slh.wisc.edu]
Sent: Friday, April 11, 2003 12:24 PM
To: 'Dsida, Michael'
Cc: Harding, Patrick; Neuser, Thomas; Hanby, Linda; Laessig, Ronald; Gundrum, Mark
Subject: RE: Update on Gundrum DUID bill

Dear Michael,

Pat requested that I field this question for the group.

Your question was whether any of the Schedule V drugs listed in 961.22 are commonly used street drugs. My response is that ANY preparation with opiates is abused. It only took a minute to look on the EROWID.ORG website to find a wealth of information for the use/abuse of codeine, including how to extract it out of low concentration preparations (like these Schedule V preparations) for "recreational" use: " Due to the difficulty in obtaining Rx drugs containing enough codeine to be used recreationally, I have included a procedure that allows one to extract the codeine from OTC products to obtain enough of the drug to use recreationally. " (A small excerpt from erowid including this statement and more is attached below for your perusal.)

In any case, applying a "used as directed" ONLY to schedule V substances would be a nightmare in practical application, as it is impossible to know which form of codeine was ingested. i.e., Was it a Schedule V used recently, or was it from a Schedule II used yesterday?

This is yet another example of problems with including prescription medications in the bill. Since I was not able to attend the meeting with Representative Gundrum (due to a vacation) I did not have a chance to add my experience to the prescription med discussion. I have been testifying in DUID (Driving under the influence of drugs) cases across the state for the last 6 years. The division of cases with prescription medications vs "illicit" drugs is approximately 50/50. My log of cases for the last 9 months includes 32 cases with prescription medication (a few with illicit drugs in addition) and 28 with only illicit drugs present. I have consulted on several hundred more cases where this same ratio holds true.

Certainly the illicit drugs, Schedule I plus Cocaine, need a per se law in order to be prosecuted more effectively than the current status with the burden of proof of impairment, but it is my opinion that the current law handles DUID with prescription drugs very well. Whether the case involves a "diverted" prescription, abuse of prescribed meds or proper use of medication, the prosecutors have had the tools they needed. I fear that inclusion in a per se bill with the "affirmative defense" addition will only weaken what is already in place.

I would like to invite you or Representative Gundrum to call me and discuss your reasons to include prescription drugs in your bill. Perhaps my experience can be helpful to see how the current law is applied to the cases you wish to address.

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Information from the erowid website:

usingCodeine

Again a good dose to start using codeine at is in the 30mg to 60mg range. At this dosage range the adverse effects tend to be minimal, and the pleasurable effects quite noticeable.

[I have never noticed any euphoria below 100mg, so don't give up just because two 3s don't give you a high. *However, some unfortunate individuals are allergic to codeine, and, if you have never used it before, first try a dose of around 30-60mg and see what will happen. It is dangerous to start off in the high dose range.*]

It is usually a good idea to take the drug on an empty stomach, and if nausea is experienced or you get hungry (not likely) you can have something to eat. On an empty stomach the effects will become noticeable within 15 min depending on the dose. With higher doses the effects can begin in as little as 7 min. The effects peak at around 1 hr with the experience nearing it's end at around the 3 - 4 hr point. Again with higher doses effects may last 4 - 6 hours.

The effects will usually begin with a slight sedation, and a feeling of warmth coming over you body. Muscular relaxation is also quite noticeable. The subjective effects are quite hard to describe beyond the word euphoria. The sedation associated with codeine is quite a lot less than that experienced with morphine or other stronger opiates. A strong feeling of contentment is usually also experienced. Most people enter a phase where you become quite content and tend to lose interest in their surroundings. A heavy feeling in the limbs also becomes quite noticeable. This will peak at 1hr with the effects slowly tapering off after 2hr.

extractionCodeine Extraction Technique

Due to the difficulty in obtaining Rx drugs containing enough codeine to be used recreationally, I have included a procedure that allows one to extract the codeine from OTC products to obtain enough of the drug to use recreationally.

This extraction can *only* be used on OTC products containing either acetaminophen or aspirin in addition to the codeine. There is one exception to this rule. Products containing caffeine can be used with the knowledge that the most of the caffeine contained in the OTC product, *will* be found in the finished product. This should not matter to most people, but to those with problems in taking caffeine, *you have been warned*!

[I have found that it is better to use products containing aspirin, as opposed to tylenol, because the filtering process goes more smoothly and, if one is not allergic to salicylates, aspirin is safer (easier on the liver, etc). Given its solubility, you will also end up with far less aspirin than acetaminophen per volume of the product.]

The idea behind the following extraction is that acetaminophen and aspirin (I'll use A/A from now on) are very insoluble in cold water. Codeine phosphate (the most common salt of codeine) is very soluble in water including cold water. The following table explains:

Codeine Type	Solubility (31C water)	Solubility (21C water)
Aspirin	1g / 100 ml	1g / 300ml
Acetaminophen	1g / 70 ml	1g / 150 ml
Codeine	1g / 2.3 ml	1g / 0.7 ml
Phosphate	?g / ? ml	?g / ? ml

So as you can see, both A/A aren't very soluble in 21C water, so if you cool the water to around 10C, the solubility will drop even further. That way you can dissolve 20 tablets in 50ml of hot water, cool the water down to 10C, filter the solution and end up with the same amount of codeine as the tablets contained but only a fraction of the original amount of A/A.

It must be noted that because most of the caffeine will also be in the finished product, using large amount of tablets in the following procedure will result in large amount of caffeine in the finished product. For example the use of 20 tablets will result in about 300mg of caffeine in the finished product (15mg/tablets * 20 tablets). I personally haven't experienced any adverse reactions due to this amount of caffeine. Because of codeine's sedative effects the "jitters" and other adverse effects of large amount of caffeine are not experienced.

The Procedure

1. Obtain a quantity of tablets containing codeine, check to see if they contain anything other than codeine, caffeine, acetaminophen or aspirin. If they do, and you don't know whether or not it will be a problem, your best bet is not to use them. Measure out your desired amount of codeine (ex. 64 mg = 8 tablets * 8mg/tablet). You may want to add 2 extra tablets as it is quite likely you will lose some codeine in the procedure. As you get more experience with the procedure you will be able to get approx. 95% of the codeine extracted.

2. Measure out some nice hot water, use approx. 40ml / 20 tablets or more if needed. I would suggest you don't go over 50ml for 20 tablets. I don't know if the use of boiling water would destroy any of the codeine but your best bet is not to use it. Use hot water but not boiling. Make sure the tablets dissolve completely. Some dissolve on contact with water while others need some help dissolving by crushing them. Note : not all of the tablet will dissolve, there are water-insoluble fillers in the tablet and not all of the A/A will dissolve either(which is what we want).

3. . . . I stopped here, but there were more steps to the process!

-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]

Sent: Thursday, April 10, 2003 4:48 PM

To: Harding, Patrick

Cc: Neuser, Thomas; Hanby, Linda; Laessig, Ronald; Liddicoat, Laura; Gundrum, Mark

Subject: RE: Update on Gundrum DUID bill

Do you know whether any of the drugs (other than atropine sulfate) listed in s. 961.22 (2) (see below) are commonly used street drugs? I believe that at least a couple of them are. If they were not, perhaps there would be a way to treat them separately from other Schedule I to V substances? Maybe by making the "used as directed defense" (which we are eliminating from this draft) applicable only to them??? But given their prevalence, that may not be an option.

961.22 (2) (intro.) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

961.22(2)(a)

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

961.22(2)(b)

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

961.22(2)(c)

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

961.22(2)(d)

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

961.22(2)(e)

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

961.22(2)(f)

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

-----Original Message-----

From: Harding, Patrick [mailto:bayouboy@mail.slh.wisc.edu

<mailto:bayouboy@mail.slh.wisc.edu>]

Sent: Thursday, April 10, 2003 4:09 PM

To: 'Dsida, Michael'

Cc: Neuser, Thomas; Hanby, Linda; Laessig, Ronald; Liddicoat, Laura;

'Mark.Gundrum@legis.state.wi.us'

Subject: RE: Update on Gundrum DUID bill

Michael,

Tom Neuser, Laura Liddicoat (Forensic Toxicology Program Supervisor) and I discussed your question - at length. Ultimately we concluded that this is one more example of just how complicated drafting a per se drug bill truly is.

We are trying (desperately) to come up with a proposal that will exclude per se limits on prescription drugs without making for an overly complicated law that dilutes what Representative Gundrum is trying to accomplish. That would eliminate problems such as the one you brought up. We will have to discuss this with Representative Gundrum.

The complexity with opiate medications is likely not the only inconsistency that will surface with the bill as it is currently being drafted. Since we cannot anticipate every situation, we feel that we must rely on prosecutors to "do the right thing based on all of the facts. Ultimately the prosecutor will have to decide whether to charge or not.

Patrick Harding

Toxicology Section Supervisor

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-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us

<mailto:Michael.Dsida@legis.state.wi.us>]

Sent: Thursday, April 10, 2003 11:35 AM

To: Neuser, Thomas; Harding, Patrick; Hanby, Linda; Laessig, Ronald

Subject: RE: Update on Gundrum DUID bill

I told Tom that Peggy and I remember a different recommendation with respect to Schedule II drugs, but what Tom suggests below makes more sense.

But how should the bill treat drugs that are covered by Schedule V? Buprenorphine and pyrovalerone should be pretty easy, one way or another. But other drugs listed in Schedule V also are covered by other schedules. Take opium, for example. A person could obtain a Schedule V concentration of opium

without a prescription, but if the opium is detectable in the person's blood, he or she could be prosecuted, because opium is also in Schedule II. I don't think Rep. Gundrum intends for that to happen. Any suggestions?

-----Original Message-----

From: Neuser, Thomas [mailto:noisey@mail.slh.wisc.edu
<mailto:noisey@mail.slh.wisc.edu>]
Sent: Thursday, April 10, 2003 11:06 AM
To: Harding, Patrick; Hanby, Linda; Laessig, Ronald
Cc: 'Dsida, Michael'
Subject: Update on Gundrum DUID bill

Mike Dsida from the Legislative Reference Bureau called me this morning. He is making final revisions to the bill and needed clarification about how to handle the scheduled drugs while still allowing for an affirmative defense where a driver had a valid prescription for the drug.

My recollection was that the new Gundrum law would apply to all drug schedules: If a person did not have a prescription, they were prohibited from driving with the drug in their system. If they did have a prescription, then they could present an affirmative defense to the Gundrum law (i.e., no detectable amount of drug in the blood) but would still be required to refrain from driving if the drug impaired their ability to drive, as under the current law. All the provisions of the current law will remain in effect.

After the revised draft is ready, I expect to hear from Mr. Dsida and Rep. Gundrum again.

Tom

Dsida, Michael

Subject: FW: Update on Gundrum DUID bill

-----Original Message-----

From: Gundrum, Mark

Sent: Friday, April 18, 2003 9:16 PM

To: 'Liddicoat, Laura'; Dsida, Michael

Cc: Harding, Patrick; Neuser, Thomas; Hanby, Linda; Laessig, Ronald;
Gundrum, Mark

Subject: RE: Update on Gundrum DUID bill

Perhaps I missed something, but I was pretty sure after the meeting in my office that it was clear to everyone there that we were NOT going to include prescription drugs, but were just going to leave those under the present law -- EXCEPT that we were going to include those that are used when there is no prescription (meaning we weren't going to get into whether a person used it in a manner consistent with his/her prescription, but we were going to try to cover those situations where a person is using a drug which could be legally used with a prescription, but is using it without a prescription and driving). If this cannot practically be done or it risks making things worse, then I don't want to do it and we'll just stick to schedule one.

At this point it really may be worth setting up another meeting for this week just to make sure we are all still on the same page. I will have my staff call to try and arrange this for either Tuesday, Wednesday or Thursday of this week.

Thanks.

Mark

Mtg w / Laura + Tom

(minus THC generally)

Sched I + cocaine

+ Delta-9 (no other cannabinoids)

+ methamphetamine (unless ~~a~~ prescription for it or
its precursors)

+ cocaine or its metabolites

C.

Dsida, Michael

From: Liddicoat, Laura [ll@mail.slh.wisc.edu]
Sent: Tuesday, April 29, 2003 11:14 AM
To: 'Dsida, Michael'
Cc: Neuser, Thomas
Subject: RE: Drugged Driving Bill - 04/22/03 meeting

Michael,

Tom and I discussed your question, and agree that "metabolic precursors" would appropriate to use in this case.

Laura

-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Monday, April 28, 2003 4:20 PM
To: Neuser, Thomas; Liddicoat, Laura
Subject: RE: Drugged Driving Bill - 04/22/03 meeting

We talked at the meeting about methamphetamine and its precursors. Should I refer to its "metabolic precursors"? I'm concerned that ephedrine or pseudoephedrine could otherwise be viewed as precursors, given that those drugs are used to make meth (although I know that people don't need a prescription for them).

Hurley, Peggy

From: Dsida, Michael
Sent: Wednesday, July 02, 2003 12:04 PM
To: Hurley, Peggy
Subject: RE: Restricted controlled substances drafts

I'll let you decide what to do with #1. (FYI -- Gundrum may be introducing it today or tomorrow)

From a prelim look, I think Tim's right on 3.

-----Original Message-----

From: Fast, Timothy
Sent: Wednesday, July 02, 2003 11:39 AM
To: Hurley, Peggy
Cc: Dsida, Michael
Subject: Restricted controlled substances drafts

A few comments:

1. Do you think it needs a REVOCATION tagline? You are creating s. 346.63 (1) (am). Does that fall under s. 13.0965? One could argue it is a proposal to revoke a person's operating privilege for violations of s. 346.63 (1) (am). On the other hand, the provision requiring revocation just refers to convictions under s. 346.63 (1). See s. 343.30 (1q) and, for that matter, s. 343.307 (1) and (2) re counting. But "any offense" would seem to be implicated by your amending of s. 343.31 (2).
2. Is s. 23.33 (1) (i) definition of "intoxicant" OK since all restricted controlled substances are controlled substances? Probably....
3. I'd amend the first sentence of s. 23.33 (4p) (d) re admissibility the same way you did in amending s. 350.104 (4). Then the second sentence re s. 885.235 works well. Also, I'd make same change to s. 30.684 (4).
4. Since you've created specific offenses re restricted controlled substances, consider being specific re offenses in proposed s. 885.235 (1k). That is, more like s. 885.235 (1m) although this is a terribly minor point and shows the deficit of direction and purpose of my life.

I apologize for not getting these comments to you sooner. --Tim

Timothy N. Fast
Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-9739